

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE )  
SUBSTANTIAL DEVELOPMENT )  
PERMIT GRANTED BY SNOHOMISH )  
COUNTY TO JUNE AND RUSSELL )  
THORP, )  
PAULINE HANSEN, )  
Appellant, )  
v. )  
SNOHOMISH COUNTY and )  
JUNE and RUSSELL THORP, )  
Respondents. )

SHB No. 86-26

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter is a request for review of Snohomish County's granting a Shoreline Substantial Development Permit to construct a restroom facility in a privately-owned park located on the Pilchuck River and its associated wetlands. The Shorelines Hearings Board held a hearing in Everett, Washington on November 12, 1986; Lawrence J. Faulk, Chairman and Presiding Officer, Judith A. Bendor and Rodney M. Kerslake, Members, were present. Member Nancy Burnett has reviewed

1 the record. The Board, accompanied by the parties, viewed the site on  
2 November 12, 1986.

3 At the hearing, appellant Pauline Hansen represented herself.  
4 Respondent Snohomish County appeared by Sue Tanner, Deputy Prosecuting  
5 Attorney. Respondent Russell Thorp represented himself. Court  
6 Reporter Leslie Kay of Allied Court Reporters recorded the proceedings.

7 Witnesses were sworn and testified. Exhibits were admitted and  
8 oral testimony was taken. Based upon a review of the testimony,  
9 arguments and exhibits, the Shorelines Hearings Board makes these

10 FINDINGS OF FACT

11 I

12 On July 12, 1983 June and Russell Thorp applied for a permit to  
13 construct a 20' by 40' restroom facility and drainfield (hereafter  
14 "project") in a privately-owned 8-acre park on the west bank of the  
15 Pilchuck River and its associated wetlands. Portable toilets are  
16 currently in use there. The Thorps plan to replace the portable  
17 toilets with the restroom.

18 II

19 The County issued a Declaration of Non-Significance for the  
20 project on February 7, 1986, after review of a completed environmental  
21 checklist and other information in the County's file. Snohomish  
22 County did not hold a public hearing. On May 8, 1986, Snohomish  
23 County, through its Department of Planning and Community Development,  
24 approved the Shoreline Substantial Development Permit for the project.

25 Feeling aggrieved by this action, appellant filed an appeal with  
26 this Board on June 9, 1986. The Department of Ecology certified

appellant's request for review on June 18, 1986. A pre-hearing conference was held in Seattle on July 17, 1986. Appellant Hansen, respondent Snohomish County by Deputy Prosecuting Attorney Sue A. Tanner, and respondents June and Russell Throp were present. Lawrence J. Faulk, Chairman of the Board, presided. A pre-hearing order was issued on July 18, 1986.

### III

The proposed restroom is within the 100-year Flood Plain of the Pilchuck River. A Flood Control Zone Permit has been obtained. The park property is designated "Rural" in the Snohomish County Shorelines Management Master Program ("SCSMMP"). This project is not located within a Shoreline of Statewide Significance. The park itself existed prior to the enactment of the Shoreline Management Act ("SMA") or the adoption of the SCSMMP.

### IV

The SCSMMP permits recreational use in the "Rural Environment" subject to the General Regulations (p. F-51). The SCSMMP use activity compatibility matrix (p. F-3) also shows that recreation is an allowable use in a designated "Rural" area.

### V

The only SCSMMP General Regulation which is applicable states:

1. Recreation facilities shall be designed to take maximum advantage of and enhance the natural character of the shoreline area. (p. F-50)

VI

The SCSMMP policies for recreation applicable to this project are:

1. Give priority to developments which provide recreational uses and other improvements facilitating public access to shorelines.
8. Encourage a variety of recreational facilities which will satisfy the diversity of demands from groups in nearby populated centers.
9. Allow intensive recreational developments only where sewage disposal and vector control can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational use.
10. Minimize surface runoff from recreational facilities.

VII

The drainfield is to be located below the surface of a hill, to the south of the restroom facility, approximately 450 feet distance from access road Three Lakes Road. The location of the drainfield is not conducive to parking vehicles.

VIII

The project was designed by a licensed engineer. Design drawings of the system were provided to the County along with the project application. The Snohomish Health Department, a health district authorized under RCW 70.46.080 to perform all duties vested in a county board of health, RCW 70.46.060, reviewed the application and design drawings.

A field sanitarian for the Department conducted a site-visit and determined that the proposed drainfield will be located more than 100' from the river. He observed 4 to 5 portable toilets on site. Respondent Thorp testified that there have been up to 8 such toilets on site.

1 The sanitarian did soil logs and compared them to the data  
2 provided by Mr. Thorp's engineer. Environmental Protection Agency  
3 design criteria were used to calculate the waste flow, e.g. 4.3  
4 gallons per day per person. Mr. Thorp's figure of 150 persons average  
5 per day park usage was used to calculate total daily waste flows.

6 Based upon review of the file information the on-site visit and  
7 the sanitarian's own calculations, the Department concluded that the  
8 design was adequate and met the requirements of WAC 248-96, the State  
9 regulations for design and location of on-site sewage disposal. The  
10 Snohomish County Health Department has adopted these regulations.

11 The Health Department granted provisional approval of the project  
12 on September 27, 1985. Final approval awaits final approval of the  
13 Shoreline Substantial Development Permit and the County's Park  
14 Department's review and inspection program.

#### 15 IX

16 The park is currently used primarily in the summer, on the  
17 weekends, by approximately 150 to 200 people per day. Russell and  
18 June Thorp have leased the park to Eag A. Lee, who then makes it  
19 accessible to the public for a fee, to groups including the American  
20 Legion and the Fraternal Order of Eagles. Uses include barbecuing and  
21 picnicing. According to the lease, firearms are not permitted on the  
22 premises and parking is only permitted on a 25-foot strip adjacent to  
23 Three Lakes Road.

IX

No evidence was presented that increased use of the park or increased noise would occur because of the restroom facility. Respondent County conceded that there would be some increase of noise during construction.

No evidence was presented that increased surface runoff would occur because of the proposed facility.

Any Conclusion of Law, which is deemed a Finding of Fact, is hereby adopted as such.

From these Findings of Fact, the Board comes to these

CONCLUSIONS OF LAW

I

The two issues presented to this Board for review are:

1. Whether the project is consistent with the Shoreline Management Act, chapter 90.58 RCW, as implemented by the Snohomish County Shoreline Master Program (SCSMMP)?

2. Whether the project is consistent with the State Environmental Policy Act regarding the drainfield and noise?

II

The appellant bears the burden of proving that the granting of this Substantial Development Permit was incorrect. RCW 90.58.140(7).

III

No substantial development may lawfully be undertaken on the shorelines of the state unless a permit authorizing the project is first obtained. RCW 90.58.140.

IV

This Board hears cases de novo, on an independent record made before it, and is not limited to what may have been presented to or considered by the permit-issuing entity. San Juan County v. Department of Natural Resources, 28 Wn.App. 796, 696 P.2d 995 (1981).

The proceedings before this Board, therefore, provide an opportunity for appellants and respondents alike to present a proposal for a "second look", based, to the extent they may choose, on new or different information.

V

The proposed project, a restroom and associated drainfield, is in conformance with SCSMMP Policy No. 1 (p. F-49) which gives priority to developments, such as the park, which provide recreational use. The proposed project is clearly accessory to the park use and will facilitate continued public use of the park.

VI

The proposed project is in conformance with SCSMMP Policy No. 8 (p. F-49) which encourages a variety of recreational uses such as this park.

VII

The proposed project is in conformance with SCSMMP Policy No. 9 (p. F-49) by providing sewage disposal which meets State and County standards. No evidence was presented that the facility would adversely alter the natural features attractive for recreational use.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
SHB No. 86-26

VIII

No evidence was presented that the proposed project will cause increased surface runoff, and the project, therefore conforms with SCSMMP Policy No. 10 (p. F-50).

IX

The project is a permitted recreational use under the SCSMMP's General Regulation for "Rural Environment" (pp. F-3 and F-51).

X

The operation of this project will not lead to adverse water quality impacts, as it is designed and located in conformance with State and County regulations for on-site sewage disposal, and no evidence was submitted demonstrating that the proposed restroom facilities would result in any increased long-term noise impacts.

XI

Any Finding of Fact, which is deemed a Conclusion of Law, is hereby adopted as such.

From these Conclusions of Law the Board enters this



ORDER

The action of Snohomish County in granting a Shoreline Substantial Development Permit to June and Russell Throp is affirmed.

DONE at Lacey, Washington, this 31<sup>st</sup> day of December, 1986.

SHORELINE HEARINGS BOARD

 12/29/86  
LAWRENCE J. FAULK, Chairman

  
JUDITH A. BENDOR, Member

  
RODNEY M. KERSLAKE, Member

  
NANCY BURNETT, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER  
SHB No. 86-26